

(defined in § 708.4) performing work on-site at DOE-owned or -leased facilities, unless the procedures contained in 29 CFR part 24, “Procedures for the Handling of Discrimination Complaints under Federal Employee Protection Statutes,” are applicable. The procedures of this part 708 do not apply to contractor employees at government-owned, government-operated facilities, or to complaints of reprisal stemming from, or relating to, discrimination by contractors on a basis such as race, color, religion, sex, age, national origin, or other similar basis not specifically discussed herein. The protections afforded by this part are not applicable to any employee who, acting without direction from his or her employer, deliberately causes, or knowingly participates in the commission of, any misconduct set forth in § 708.5 that is the subject of the disclosure.

(c) For complaints not covered by § 708.5(a), the Director, at his discretion and for good cause shown, may accept a complaint for processing under this part. However, in no event will coverage under the rule be extended to employees of contractors over whom DOE does not exercise enforcement authority with respect to the requirements of this part. A determination by the Director not to accept a complaint pursuant to this subsection may be appealed to the Secretary of designee.

§ 708.3 Policy.

It is the policy of DOE that employees of contractors at DOE facilities should be able to provide information to DOE, to Congress, or to their contractors concerning violations of law, danger to health and safety, or matters involving mismanagement, gross waste of funds, or abuse of authority, to participate in proceedings conducted before Congress or pursuant to this part, and to refuse to engage in illegal or dangerous activities without fear of employer reprisal. Contractor employees who believe they have been subject to such reprisal may submit their complaints to DOE for review and appropriate administrative remedy as provided in §§ 708.6 through 708.11 of this part.

§ 708.4 Definitions.

For purposes of this part—

Contractor means a seller of goods or services who is a party to a procurement contract as follows:

(1) A Management and Operating Contract;

(2) Other types of procurement contracts; but this part shall apply to such contracts only with respect to work performed on-site at a DOE-owned or -leased facility; or

(3) Subcontracts under paragraphs (1) or (2) of this definition; but this part shall apply to such subcontracts only with respect to work performed on-site at a DOE-owned or -leased facility.

Day or days mean(s) calendar day(s).

Director means, unless otherwise indicated, the Director, Office of Contractor for Employee Protection.

Discrimination or discriminatory acts mean(s) discharge, demotion, reduction in pay, coercion, restraint, threats, intimidation, or other similar negative action taken against a contractor employee by a contractor, as a result of the employee's disclosure of information, participation in proceedings, or refusal to engage in illegal or dangerous activities, as set forth in § 708.5(a) of this part.

Employee or employees mean(s) any person(s) employed by a contractor, and any person(s) previously employed by a contractor if such prior employee's complaint alleges that employment was terminated in violation of § 708.5. The determination of whether a person has standing as an employee shall be made without regard to the on- or off-site locale of the person's work performance.

Field organization means a DOE field-based office that is responsible for the management, coordination, and administration of operations under its purview.

Head of Field Element means an individual who is the manager or head of a DOE operations office, other field office, or field organization.

Hearing Officer means an individual appointed by the Director, Office of Hearings and Appeals, pursuant to § 708.9.

Management and Operating Contract means an agreement under which DOE

contracts for the operation, maintenance, or support, on its behalf, of a Government-owned or -leased research, development, special production, or testing establishment wholly or principally devoted to one or more of the programs of DOE.

Official of DOE means any officer or employee of DOE whose duties include program management or the investigation or enforcement of any law, rule, or regulation relating to Government contractors or the subject matter of a contract.

Party or *parties* mean(s) any employee, contractor, or other party named in a proceeding under this part.

Work performed on-site means work performed within the boundaries of a DOE-owned or -leased facility. However, work will not be considered to be performed “on-site” when pursuant to the contract it is the only work performed within the boundaries of a DOE-owned or -leased facility, and it is ancillary to the primary purpose of the contract (e.g., on-site delivery of goods produced off-site).

Subpart B—Procedures

§ 708.5 Prohibition against reprisals.

(a) A DOE contractor covered by this part may not discharge or in any manner demote, reduce in pay, coerce, restrain, threaten, intimidate, or otherwise discriminate against any employee because the employee (or any person acting pursuant to a request of the employee) has—

(1) Disclosed to an official of DOE, to a member of Congress, or to the contractor (including any higher tier contractor), information that the employee in good faith believes evidences—

(i) A violation of any law, rule, or regulation;

(ii) A substantial and specific danger to employees or public health or safety; or

(iii) Fraud, mismanagement, gross waste of funds, or abuse of authority;

(2) Participated in a Congressional proceeding or in a proceeding conducted pursuant to this part; or

(3) Refused to participate in an activity, policy, or practice when—

(i) Such participation—

(A) Constitutes a violation of a Federal health or safety law; or

(B) Causes the employee to have a reasonable apprehension of serious injury to the employee, other employees, or the public due to such participation, and the activity, policy, or practice causing the employee's apprehension of such injury—

(1) Is of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude there is a *bona fide* danger of an accident, injury, or serious impairment of health or safety resulting from participation in the activity, policy, or practice; and

(2) The employee is not required to participate in such dangerous activity, policy, or practice because of the nature of his or her employment responsibilities;

(ii) The employee, before refusing to participate in an activity, policy, or practice has sought from the contractor and has been unable to obtain a correction of the violation or dangerous activity, policy, or practice; and

(iii) The employee, within 30 days following such refusal, discloses to an official of DOE, a member of Congress, or the contractor, information regarding the violation or dangerous activity, policy, or practice, and explaining why he has refused to participate in the activity.

(b) An employee disclosure, participation, or refusal described in § 708.5(a) (1), (2), or (3) shall be subject to this part only if it relates to activities alleged to have occurred under work performed by the contractor for DOE. This part is not intended to override any other provision or requirement of any regulation pertaining to Restricted Data, national security information, or any other classified or sensitive information, and the protections of this part shall not apply to any person who, in the course of making a disclosure described in § 708.5(a) (1) or (3), or in the course of participating in a proceeding described in § 708.5(a)(2), improperly discloses Restricted Data, national security information, or any other classified or sensitive information in violation of any Executive Order, statute, or regulation.